

REMARKS

At the time of the Second Office Action dated January 27, 2009, claims 1, 8, and 15 were pending and rejected in this application. Claims 1, 8, and 15 have been amended, and claims 21-37 have been added. Claims 21-37 substantially correspond to previously cancelled claims 2-7, 9-14, and 16-20. Applicants submit that no new matter has been added.

CLAIM 1 IS REJECTED UNDER 35 U.S.C. § 101

On pages 2 and 3 of the First Office Action, the Examiner asserted that the claimed invention, as recited in claim 1, fails to meet the requirements of 35 U.S.C. § 101. This rejection is respectfully traversed.

Although Applicants disagree with the Examiner's implied assertion that independent claim 1 is not directed to statutory subject matter, independent claim 1 has been amended to recite a "computer-implemented method." As such, at the very least, independent claim 1 is tied to a machine and meets the 'machine or transformation' test described within *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc). Applicants, therefore, respectfully solicit withdrawal of the imposed rejection of claim 1 under 35 U.S.C. § 101.

CLAIMS 1, 8, AND 15 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON WILLIAMS ET AL., U.S. PATENT PUBLICATION NO. 2003/0212561 (HEREINAFTER WILLIAMS) IN VIEW OF KOEHLER ET AL., U.S. PATENT PUBLICATION NO. 2003/0156706 (HEREINAFTER KOEHLER)

On pages 2-4 of the First Office Action, the Examiner concluded that one having ordinary skill in the art would have been impelled to modify Williams in view of the Koehler to arrive at the claimed invention. This rejection is respectfully traversed.

Applicants incorporate herein the arguments previously presented on page 2, line 14 through page 7, line 12 of the First Response dated November 26, 2008 (hereinafter the First Response), and mostly ignored by the Examiner.

Referring to the paragraph spanning pages 2 and 3 of the Second Office Action, the Examiner asserted the following:

Examiner takes the position that Williams and Koehler are both within the scope of the present invention and directly teach methods in parallel with the present invention (present invention [0021]) relevant to XML, voice applications, simulation and testing, and voice call flows, wherein Williams in view of Koehler as a whole clearly appear to teach voice and text equivalents of voice calls for predetermined and nominal output. Further, *nominal output*, when read in light of the specification (present invention [0021]) is construed to be functionally equivalent and equally effective to text/voice in a simulated environment, such as having text in training mode versus voice in real-time.

At the outset, Applicants are unclear as to what the Examiner means when the "Examiner takes the position that Williams and Koehler are both within the scope of the present invention and directly teach methods in parallel with the present invention." To assert that the prior art is within the scope of the claimed invention is to assert that both references are anticipatory under 35 U.S.C. § 102. However, this does not appear to be the Examiner's intent.

Alternatively, the Examiner could be asserting that Williams and Koehler are within the same field of endeavor as the claimed invention. However, the Examiner's analysis is akin to asserting that motorcycles and automobiles are within the same field of endeavor because both involve wheels, engines, and transmissions. The fact that different fields of endeavor share

1 similar features does not make them from the same field of endeavor. Regardless, the Examiner
2 did not explicitly refer to the same "field of endeavor." As such, Applicants are unclear as to the
3 point attempted to be made by the Examiner. In this regard, Applicants respectfully suggest that,
4 if the Examiner is attempting to make a finding that pertains to a particular legal concept, the
5 Examiner employ the terminology commonly-used with that legal concept.

6
7 As to the Examiner's reference to "nominal output," again, Applicants are unclear as to
8 the particular point attempted to be made by the Examiner. If the Examiner is attempting to rely
9 upon the doctrine of equivalency, the Examiner is referred to M.P.E.P. § 2144.06. As to the
10 Examiner's suggestion that a "nominal output" is somehow "equally effective" to text/voice in a
11 simulated environment, the Examiner is respectfully referred to the discussion of the Graham
12 findings of fact found within the First Response, which is the cornerstone of obviousness
13 analysis. Specifically, the Examiner should determine the scope and content of the applied prior
14 art with regard to the claims at issue, which involves identifying specific teachings in the applied
15 prior art for each claimed limitation. Based upon the Examiner's analysis, Applicants are unclear
16 is the Examiner is asserted that the claimed "nominal output" is taught by one (or both) of the
17 references.

18
19 Referring to pages 3-6 of the Second Office Action, the Examiner's analysis refers to
20 certain specified passages within the applied prior art without explaining why these particular
21 passages are relevant to the claimed limitations. Instead, the Examiner excessively relies upon
22 the use of underlining, the purpose of which is a mystery to Applicants. Applicants respectfully
23 suggest that the Examiner provide an explanation as to why these cited passages are relevant to

the claim language, and in so doing, Applicants recommend that the Examiner specifically refer to the claim language at issue.

In the first full paragraph on page 3 of the Second Office Action, the Examiner asserted the following:

Williams teaches predetermined input and nominal outputs such as buttons pushed by a user having a known/predetermined outcome, wherein Williams teaches The IVR 18 can, among the IVR selections offered, request that the telephone caller enter "identifying information," for example an account number, by button pushes on the telephone keypad or by voice responses from the telephone caller. Identifying information can also be automatically provided by the PBX/ACD 16 without entry by the telephone caller with a variety of methods, including dialled number identification service (DNIS) and automatic number identification (ANI). The identifying information is passed through the PBX/ACD 16 to the bus 26 ([0039]). (emphasis in original)

Even assuming arguendo that "Williams teaches predetermined input and nominal outputs," the claimed invention recites "processing the user simulation script to generate both a simulated output for the voice application corresponding to the nominal output and a simulated input for the voice application corresponding to a pre-determined user input to the voice application." Thus, the teaching of predetermined input and nominal outputs is not enough. Instead, a user simulation script must be processed to generate both (i) "a simulated output for the voice application corresponding to the nominal output" and (ii) "a simulated input for the voice application corresponding to a pre-determined user input." These teachings, however, are not found in the applied prior art.

In the paragraph spanning pages 3 and 4 of the Second Office Action, the Examiner further asserted the following:

Further, Williams teaches real-time calls in VXML, wherein Williams teaches virtual test systems that have been applied to contact centers. For example, virtual telephone caller systems 38 have been provided to simulate telephone callers within the PSTN 12. The virtual telephone caller system 38 can generate "virtual telephone caller actions," for example virtual telephone calls, to the contact center 14, thereby accessing the PBX/ACD 16, the IVR 18, and agent telephones, for example agent telephone 22. The virtual telephone caller system 38

can also receive contact center functions, for example an IVR audio response. With this particular arrangement, the IVR 18 can be tested for response accuracy and response time ([0042]). (emphasis in original)

Applicants recognizes that Williams teaches that a test script is used by a virtual telephone caller system 50 to simulate telephone callers. However, this is not an issue that was contested by Applicants. As such, the Examiner's response is non-responsive to the arguments actually made by Applicants.

In the paragraph spanning pages 4 and 5 of the Second Office Action, the Examiner further asserted the following:

Furthermore, Williams teaches that the audio telephone signals can be provided having both a signaling portion and a real time (RT) portion, wherein the signaling portion corresponds to the dialing of a telephone call, and the RT portion corresponds to audio that can either be voice or telephone button pushes corresponding to human telephone caller actions, for example dialing a call, and to human telephone caller responses to actions of the contact center 64. The contact center 64 is also coupled to the PSTN 62 and receives the audio telephone signals generated by the virtual telephone caller system 50. The audio telephone signals are routed to the IVR 66 by the PBX/ACD (not shown), e.g. PBX/ACD 16 of FIG. 1. The audio telephone signals are received by the telephony interface 68. The telephony interface 68 provides an audio to text conversion, thereby providing text representations of the audio telephone signals to the voice extensible markup language (VXML) browser 70. The VXML browser 70 recognizes the text representations provided by the telephony interface 68 and generates a software linkage to a VXML response page, the software linkage communicated to an IVR Server 72. The IVR server, upon receiving the software linkage to the VXML response page, responds with the VXML response page. The VXML response page is converted by the VXML browser 70 into an IVR audio response. The IVR audio response can be any number of synthesized or pre-recorded voice messages. The IVR audio response is coupled to the telephony interface 68, through which the IVR audio response is coupled to the PSTN 62 ([0048-0049]). (emphasis in original)

Entirely absent from this passage is any discussion as to the importance of these teachings with regard to the claimed invention. Applicants are not mind readers. If the Examiner believes that these teachings are important, the Examiner should set forth an explanation as to their importance.

In the first full paragraph on page 5 of the Second Office Action, the Examiner asserted the following:

Koehler has been introduced to further strengthen the teachings of Williams, wherein Koehler teaches a segment that generates a progress report of the trainee. The progress report includes a performance assessment based on the trainee including the keywords in the trainee responses corresponding to the dialog segments and a comparison of statistical data stored in the memory segment. The simulator source code segment may further include a software emulation source code segment that provides an emulation of actual call center software to the trainee through a graphical user interface (GUI). The simulator source code segment may also include a voice playback source code segment that records the voice entered trainee portion corresponding to each dialog segment and replays the recorded trainee portion upon instruction received from a GUI (Koehler [0026] & fig. 4). (emphasis on original)

Yet again, the Examiner introduces phraseology (i.e., "to further strengthen") that has no relevance in an obviousness analysis. As already noted in the First Response, Koehler's teaching of "a progress report" has no relevance to an automated device for testing voice applications. Williams is directed to a method of generating test scripts using VXML, and a progress report of a trainee would have no relevance to the teachings of Williams. As also noted above, the fact that Koehler and Williams share a similar feature (i.e., simulated telephone call) does not establish that these inventions are within the same field of the endeavor.

In the paragraph spanning pages 5 and 6 of the Second Office Action, the Examiner further asserted the following:

Further, Koehler teaches that trainers and managers communicate with the training program primarily by text interaction from the trainer terminal 150 and the manager terminal 170, respectively. The trainers manage the training simulations, coach the trainees and report on the various scenarios. The trainers are able to alter scenarios to particularly address areas of weakness demonstrated by a trainee. Altering the scenarios may be performed in real-time, when desired by the trainer. The trainers are also able to adjust the level of automated feedback available to the trainees, also known as coaching (Koehler [0035] & fig. 4). (emphasis added)

Yet again, the Examiner's analysis is hamstrung by a failure, by the Examiner, to refer to specific language of the claims and clearly explain why the Examiner's cited passages are relevant to the specific language. The Examiner relied upon Koehler to teach "deriving additional nominal outputs of the voice application." However, the relevance of the above-reproduced assertions by the Examiner to the limitations at issue are unclear. The output being generated by Koehler is from the trainee, not from a voice application.

In the first full paragraph on page 6 of the Second Office Action, the Examiner asserted the following:

Furthermore, Kochler teaches Below the dialog table 502 is a dialog segment overview section 512, which includes a dialog segment identifier 514 and corresponding dialog segment data. The dialog segment identifier 514 indicates that the current dialog segment is the first of 10 dialog segments that comprise the scenario. The dialog segment data includes the date and time 515 of the dialog segment, the score 516, the comparable average 517 of all trainees, the elapsed time 518 used to execute the dialog segment and the total coaching time 519 provided to the trainee. Additional alternative embodiments may include any data that the trainers and/or managers deem appropriate for display during the scenario (Kochler [0075] & fig. 4).

Yet again, the relevance of this passage to the claimed invention is entirely unclear to Applicants.

For the reasons presented above and for the reasons presented in the First Response, Applicants respectfully submit that the imposed rejection of claims 1, 8, and 15 under 35 U.S.C. § 103 for obviousness based upon Williams in view of Kochler is not viable, and hence, Applicants solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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